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c.s. 1001

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.
WRIT PETITION NO. 3827 OF 2005

PETITIONER

Ankita Fatnani D/o Shri G.K. Fatnani, aged about 19 years, Student of MBBS First year in CIMS Bilaspur, C.G. R/o B-17 Agyay Nagar Bilaspur C.G.

P.R. No. 49735
Presented by Shri Rakesh Pandey
Dated 12-8-05

VERSUS

RESPONDENS

1. State of Chhattisgarh Through the Secretary Department of Health and Family Welfare, D.K.S. Bhavan, Mantralaya, Bilaspur, C.G.

2. Director
Medical Education,
State of Chhattisgarh,
Raipur, C.G.

3. Guru Ghasidas University Bilaspur, Through the Registrar, C.G.

4. Dean
Chhattisgarh Institute of Medical Science (CIMS) Bilaspur, C.G.

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WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

सत्यमेव जयते

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Full Bench)

WRIT PETITION NO. 3642 OF 2004

WRIT PETITION NO. 2482 OF 2004

WRIT PETITION NO. 2545 OF 2004

WRIT PETITION NO. 2546 OF 2004

WRIT PETITION NO.2994 OF 2004

WRIT PETITION NO.3033 OF 2004

WRIT PETITION NO. 2889 OF 2005

WRIT PETITION NO. 3827 OF 2005

WRIT PETITION NO. 3853 OF 2005

WRIT PETITION NO. 3892 OF 2005

WRIT PETITION NO. 4041 OF 2005

WRIT PETITION NO. 2476 OF 2005

WRIT PETITION NO.2706 OF 2005

ORDER FOR CONSIDERATION

Sd/-
Chief Justice

HON'BLE SHRI FAKHRUDDIN, J

JUDGE
/09/2005

HON'BLE SHRI L.C. BHADOO, J

I agree

Sd/-
L.C. Bhadoo
Judge

Post it for: 23 /09/2005

Sd/-
Chief Justice

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

(Full Bench)

CORAM : **Hon'ble Chief Justice Mr. A.K. Patnaik**
Hon'ble Mr. Justice Fakhruddin
Hon'ble Mr. Justice L.C. Bhadoo

WRIT PETITION NO. 3642 OF 2004

Sudiep Shrivastava

Vs.

State of Chhattisgarh and others

Present:-

For the Petitioner :	Mr. Kanak Tiwari, Senior Advocate, with Mr. Prateek Sharma, Advocate.
For Respondent No.I	Mr. Prashant Mishra, Addl. Advocate General, with Mr. Sumesh Bajaj, Dy. Govt. Adv.
For Respondents 4, 7 & 8	Mr. Manindra Shrivastava Senior Advocate, with Mr. Ashish Shrivastava and Mr. Amrito Das Advocates
For Respondent No.6:	Mr. Ranbir Singh Marhas, Advocate
For Respondent No.9:	Mr. Vinay Harit, Senior Advocate with Mr. Narayan Shrivastava, Advocate
For the Interveners:	Dr. N.K. Shukla, Senior Advocate with Miss Ritu Mishra, Advocate.

WRIT PETITION NO. 2482 OF 2004

Rajesh Kumar Agrawal

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Kanak Tiwari, Sr. Adv., with Mr. Prateek Sharma, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 4 & 5	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.
For respondents No.6	:	Mr. Ranbir Singh Marhas, Adv.

WRIT PETITION NO. 2545 OF 2004

Anand Bhattar

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Kanak Tiwari, Sr. Adv., with Mr. Prateek Sharma, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 4 & 5	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.
For respondents No.6	:	Mr. Ranbir Singh Marhas, Adv.

WRIT PETITION NO. 2546 OF 2004

Rimpal Bachu

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Kanak Tiwari, Sr. Adv., with Mr. Prateek Sharma, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 4 & 5	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.
For respondents No.6	:	Mr. Ranbir Singh Marhas, Adv.

WRIT PETITION NO. 2994 OF 2004

Ku. Ritika Gohwai

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. P. Diwakar, Sr. Adv., with Mr. Manoj Paranjape, Adv.

For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 3 & 4	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.
For respondents No.5	:	Mr. Ranbir Singh Marhas, Adv.

WRIT PETITION NO.3033 OF 2004

Satya Prakash Singh

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Shrawan Chandel, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 4 & 5	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.
For respondents No.6	:	Mr. Ranbir Singh Marhas, Adv.

WRIT PETITION NO. 2889 OF 2005

Ku. Vinshi Naaz Khan

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Kishore Bhaduri, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 3 & 4	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.
For respondents No.5	:	Mr. Ranbir Singh Marhas, Adv.

WRIT PETITION NO. 3827 OF 2005

Ankita Fatnani

Vs.

State of Chhattisgarh and others

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Present:-

For the petitioner	:	Mr. Rajesh Pandey, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 3 & 4	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.

WRIT PETITION NO. 3853 OF 2005

Ku. Neha Rani Verma

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Rajesh Pandey, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 3 & 4	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.

WRIT PETITION NO. 3892 OF 2005

Arshiya Moin

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Kanak Tiwari, Sr. Adv., with Mr. Prateek Sharma, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 3 & 4	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.

WRIT PETITION NO. 4041 OF 2005

Harsh Jain

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Kanak Tiwari, Sr. Adv., with Mr. Prateek Sharma, Adv.
For respondents 1, 2 & 4	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents No.3	:	Mr. Ranbir Singh Marhas, Adv.

WRIT PETITION NO. 2476 OF 2005

Smita and others

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Shrawan Chandel, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 4 & 5	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.
For respondents No.6	:	Mr. Ranbir Singh Marhas, Adv.

WRIT PETITION NO.2706 OF 2005

Somendra Dhariwal

Vs.

State of Chhattisgarh and others

Present:-

For the petitioner	:	Mr. Shrawan Chandel, Adv.
For respondents 1 & 2	:	Mr. Sumesh Bajaj, Dy. Govt. Adv.
For respondents 4 & 5	:	Mr. Manindra Shrivastava, Sr. Adv., with Mr. Amrito Das, Adv.
For respondents No.6	:	Mr. Ranbir Singh Marhas, Adv.

O R D E R
(Passed on 23rd September 2005)

The following order of the Court was passed by **A.K. Patnaik, C.J.**

W.P. No.3642 of 2004 is a Public Interest Litigation (PIL) filed by a practicing Advocate at Bilaspur and a journalist and social activist and the other petitions are writ petitions filed by individual students challenging the decision of the Chhattisgarh Institute of Medical Sciences and Guru Ghasidas University, Bilaspur to charge fees of Rs.34,500/- and Rs.2,50,000/- per student admitted into the free seats and payment seats respectively in the M.B.B.S. degree course of the Chhattisgarh Institute of Medical Science, Bilaspur.

2. The facts briefly are that the State of Chhattisgarh was formed w.e.f. 1.11.2000 by the M.P. Reorganisation Act, 2000. In the newly formed State of Chhattisgarh, there was only one medical college at Raipur with only 100 seats for the M.B.B.S. course. A second medical college in the State of Chhattisgarh was, therefore, thought necessary in the public interest to meet the deficiency of qualified medical personnel in the State and to improve the availability of medical manpower in the State. Accordingly, pursuant to an earlier resolution of the Planning and Evolution Board of the Guru Ghasidas University, Bilaspur (for short "the University"), the State Government and the University entered into a Memorandum of Understanding on 18th January, 2001 to establish a second medical college in the State of Chhattisgarh to be called the Chhattisgarh Institute of Medical Sciences (for short "CIMS"). Under the said Memorandum of Understanding (for short "the MOU"), CIMS was to

be established, owned and managed by the University and for establishment of CIMS, the State Government was to provide the Sardar Vallabh Bhai Patel Government Hospital, Bilaspur with 467 beds, and with all its facilities and staff as well as land measuring 25 acres in and around the said hospital along with the assets and CIMS was to be a joint venture of the University and the State Government. The MOU further provided that the existing facilities of medical equipment of the said hospital shall be available, extended and upgraded for the use of the students of the proposed CIMS for fulfilling the terms and conditions of the Medical Council of India. After the MOU, the State Government has provided to CIMS the funds and financial support towards non-recurring expenditure on all necessary infrastructure comprising of building, equipment, books and furniture but the recurring expenditure on qualified doctors and other staff are being met by CIMS out of the fees recovered from the students admitted to the different medical courses in CIMS. For meeting such recurring expenditure, out of the 100 seats on the MBBS course, CIMS started collecting in the year 2001 Rs.29,500/- per year per student for the first 50 free seats and Rs.1,44,000/- per year for the remaining 50 payment seats including 15 seats for Non-resident Indians (NRI) and further Rs. 15 lakhs in the first year and Rs.10 lakhs for the remaining years from Non-resident Indian students on yearly basis. Since Non-resident Indian students were not available for admission, the decision for collecting these additional amounts of Rs. 15 lakhs and Rs. 10 lakhs from Non-resident Indian students was given up and with effect from 2002-2003 fee against all payment seats was enhanced to Rs.2,50,000/- per year. The rules for admission to the MBBS course for the session 2004-2005 were framed and approved by the Executive Council of the

University providing, inter alia, for fees of Rs.34,500/- per academic session for free seats (government quota seats) and Rs.2,50,000/- per academic session for payment seats (management quota) for the academic session 2004-2005. Statute No.35 was also amended on 2.1.2004 providing for fees of Rs. 34,500/- per year from a student admitted to the MBBS course in a free seat and Rs.2,50,000/- from a student admitted to the MBBS course against a management seat of CIMS. Aggrieved by the aforesaid decisions of the authorities of the University and the CIMS, the petitioner has filed this writ petition under Article 226 of the Constitution of India praying for quashing the decision of the authorities of CIMS and the University to admit candidates in CIMS in the MBBS course against payment seats by recovering fees of Rs.2.5 lakhs per annum per student and for directing the authorities of CIMS and the University to admit candidates who have secured more and better marks than the students admitted against the payment seats in the MBBS course of CIMS on the basis of the results of the Pre-Medical Test held by the State of Chhattisgarh for the academic session 2004-2005.

3. A preliminary objection was raised by Mr. Manindra Shrivastava learned counsel appearing for CIMS and the University that no prayer has been made in any of the writ petitions for quashing the rules for admission to the MBBS course and Statute No. 35 under which fees of Rs. 34,500/- per year per student for admission to the MBBS course in a free seat and the fees of Rs. 2,50,000/- per student for admission to the MBBS course against a management seat of CIMS are fixed. We would have granted time to the petitioners to amend the petitions and add a prayer for quashing the rules for admission and Statue No. 35 under which

the aforesaid fees of Rs. 34,500/- for admission to free seats and Rs. 2,50,000/- for admission to the payment seats have been fixed. But grant of such time would have unnecessarily delayed the hearing and disposal of these writ petitions which need to be disposed of at the earliest in the interest of the students as well as the CIMS and the University. Moreover, the law is well settled that the Court has ample powers to mould the appropriate relief in any given case and for this reason we are not accepting the aforesaid technical plea raised by Mr. Shrivastava and instead proceed to dispose of the matter.

4. Mr. Kanak Tiwari, learned counsel for the petitioner, submitted that the only reason given in the return filed on behalf of respondent nos.4, 7 & 8 for charging high fees of Rs.2,50,000/- from students admitted against the payment seats is that the University and CIMS have to generate their own funds to meet the recurring expenditure on the salary of the teaching and non-teaching staff of CIMS and to fulfill the norms laid down by the Medical Council of India. He vehemently submitted that CIMS is a government college and, therefore, the State Government of Chhattisgarh has to provide funds for the recurring expenditure on salary of teaching and non-teaching staff and other expenditure on establishment of the CIMS. He submitted that in W.P.No. 2097 of 2004 the High Court passed an order dated 21.8.2003 constituting a committee consisting of the Chief Secretary, Vice Chancellor of the University; Secretary, Health, Government of Chhattisgarh; and the Collector, Bilaspur to inspect the CIMS hospital and prepare a project report for improvement in the all-round functioning of the hospital and submit the report, and this direction would not have been issued by the

High Court under Article 226 of the Constitution had the High Court not treated CIMS as a government hospital. He referred to Clauses (2) and (3) of the MOU dated 18.1.2001 annexed to the return of respondents nos.4, 7 & 8 as Annexure R-4/2 to show that CIMS is a government college. He also referred to the document annexed to the said return as Annexure-R-4/1 to show that the doctors who have been working under the government have been posted in CIMS. He submitted that it will be clear from page no. 10 of the Action Taken Report of the University submitted in compliance of the order dated 11.2.2004 passed by this Court in W.P.NO. 2097 of 2003 that a loss of Rs.17.20 crores per year suffered by CIMS was to be compensated by the State Government by way of special grants in the budget of Higher Education Department of the Government of Chhattisgarh. He further submitted that a copy of the letter dated 8.5.2004 annexed to the second supplementary action taken report of the University submitted in compliance of the order dated 28.4.2004 in W.P.No. 2097 of 2004 will also show that the State Government was to provide a sum of Rs.16.92 crores in its project for CIMS. He pointed out that 15% seats of CIMS for MBBS course are assigned to All India candidates and such 15% of the seats are assigned to All India candidates only in government colleges and this fact would also go to show that CIMS is a government college. He further pointed out that under Regulation 2(7) of the Medical Council of India Establishment of Medical Colleges Regulations, 1999, a person desiring to establish a medical college has to provide two performance bank guarantees from a scheduled commercial bank valid for a period of five years in favour of the Medical Council of India, New Delhi but the Proviso to the said Regulation 2(7) states that this condition will not apply to State Governments if they give an undertaking

to provide funds in their plan budget regularly till the requisite facilities are provided as per the time bound programme and the benefit of this proviso must have been availed by the CIMS and this would also go to show that CIMS is a government medical college. He argued that J.N.M. Medical College, Raipur is owned and managed by a society and if for admission in the J.N.M. Medical College, Raipur only a fee of Rs.12,000/- is charged (from all students taking admission to the MBBS course), charging of fee of Rs.34,500/- per annum charged from students admitted against free seats and Rs.2,50,000/- per annum from students admitted to payment seats in CIMS which was a Government Medical College was arbitrary and discriminatory and violative of Article 14 of the Constitution.

5. In reply to the aforesaid submissions, Mr. Manindra Shrivastava, learned counsel appearing for the University and the CIMS submitted that CIMS is not a medical college owned and managed by the State Government but is a medical college established by the University under Section 6(4) of the Chhattisgarh University Act, 1973. He submitted that it will be clear from the MOU dated 18th January, 2001 annexed to the return as Annexure R-4/2 that CIMS is an institution owned and managed by the University and the State Government was to provide only some infrastructure facilities. He submitted that the State Government has given some grants to meet the non-recurring expenditure of CIMS on infrastructure facilities such as building, books, equipment, etc. but the University and CIMS have to raise resources for meeting the recurring expenditure on teaching and non-teaching staff and on other establishment expenses of CIMS. He argued that since CIMS is not a government college it cannot be equated with the J.N.M. Medical College,

Raipur, which is fully funded by the State Government, and the fees charged by CIMS which is a self financing institution is bound to be higher than the fees charged by the J.N.M. Medical College, Raipur.

6. We have perused the order dated 21.8.2003 of the Division Bench in W.P.No. 2097 of 2003 referred to by Mr. Tiwari. The relevant portion of paragraph 2 of the said order dated 21.8.2003 is quoted herein below :

> " It is stated that the Sardar Vallabh Bhai Patel Hospital which was popularly known as Dharam Hospsital is now under the control of Guru Ghasidas University and known as Chhattisgarh Institute of Medical Sciences (CIMS)....."

Thus, in the said order dated 21.8.2003, the Division Bench of the Court has recognized the fact that the Sardar Vallabh Bhai Patel hospital was come under the control of the University and is known as CIMS. Hence, the contention of Mr. Tiwari that the Division Bench of the Court awhile passing the said order dated 21.8.2003 in W.P.No.2097 of 2003 has treated CIMS as a government institution is not correct.

7. Clauses 1, 2, 3 & 4, of the MOU dated 18.1.2001 annexed to the return as Annexure R-4/2 are extracted hereunder :-

> "1. That the name of the Medical College shall be the Chhattisgarh Institute of Medical Sciences (CIMS) and the same will be established by the Guru Ghasidas University, Bilaspur (C.G.).
>
> 2. That the CIMS shall be owned and managed by the Guru Ghasidas University , Bilaspur (C.G.).

3. That for the establishment of the proposed CIMS, the State Govt. has provided both the Sardar Vallabh Bhai Patel (S.V.B.P.) Govt. Hospital, Bilaspur (C.G.) and the land of 25 acres in and around the S.V.B.P. Hospital along with the assets therein on 99 years lease for the construction of building and other amenities of the Institute. The University towards its share shall be providing the staff, equipments and constructed building for the purpose.

4. That the 467 bedded S.V.B.P. Govt. Hospital with all the facilities and staff shall be available to the students of the proposed CIMS which shall be soon upgraded into a 500 bedded hospital to fulfil this norms of Medical Council of India (MCI) has been handed over to the University and that the State Government of Chhattisgarh has also earmarked 96.00 acres of land in Birkona Balka No.100, Khasra No.10/1, 39 & 40 for the purpose of construction of Building and other amenities of the proposed Institute as and when required in future. Thus, the Chhattisgarh Institute of Medical Sciences (CIMS) is now a joint venture of Guru Ghasidas University and Govt. of Chhattisgarh.

It will be clear from the language used in the aforesaid clauses 1 and 2 that CIMS was to be established by the University was to be owned and managed by the University. Clause 3 of the MOU, however, stipulated that for establishment of CIMS, the State Government was to provide the Sardar Vallabh Bhai Patel government hospital and the land of 25 acres in and around the said hospital along with the assets therein on 99 years lease for the construction of building and other amenities of the institution and the University was to provide its share towards the staff, equipments and the building. From clause 4 of the MOU, it would be clear that CIMS was to be a joint venture of the University and the Chhattisgarh Government. The provisions of MOU dated 18.1.2001 do not show that

CIMS was to be a government institution. On the other hand, the MOU made it clear that CIMS was to be established by the University and the Government only provided Sardar Vallabh Bhai Patel hospital with all the facilities and staff for establishment of CIMS.

8. After the MOU, the State government appears to have also agreed to provide grants for the non-recurring expenditure of CIMS on building up the required infrastructure but the fact that government has provided grants to build the infrastructure facilities of CIMS does not make CIMS a government institution. The fact that there was a proposal in the Action Taken Report for meeting the loss of Rs.17.20 crores of CIMS by way of special grants from the State Government also does not make CIMS a government institution. These facts only establish that CIMS was at best a government aided institution.

9. Clause 3.1 of the Rules for admission in CIMS which relates to assignment of 15% of the seats to All India candidates is quoted hereunder:-

> "3.1 Out of Govt. Quota seats, 15% seats are assigned to all India candidates. Accordingly, 7 seats shall be for all India candidates in Chhattisgarh Institute of Medical Sciences, Guru Ghasidas University. Selection for these seats will bebased on All India Pre-Medical Entrance Examination. "

The language of the aforesaid Rule 3.1 of the Rules for admission to MBBS course of CIMS for the session 2004-2005 would show that 15% seats of the MBBS course are assigned to all India candidates and the said 15% seats have been described as government quota seats. This means is that government will nominate the candidates to these 15%

seats assigned to all India candidates on the basis of Pre-Medical Entrance Examination does not mean that CIMS is a government institution.

10. No materials have been placed before the Court by the petitioner to show that CIMS had been given the benefit of the Proviso to Regulation 2(7) of the Medical Council of India Establishment of Medical College Regulation, 1999 and was not required to furnish the bank guarantees because it was a government institution. No pleading has been made in the writ petition and no material has also been filed by the petitioner in proof of the fact that the Medical Council of India has treated CIMS as a government institution and for this reasn exempted CIMS from furnishing bank guarantee as required by Regulation 2(7) of the Medical Council of India Establishment of Medical College Regulations, 1999.

11. The J.N.M. Medical College, Raipur may be owned by a society but that society is wholly funded by the State Government. Hence, while the J.N.M. Medical College, Raipur is an institution owned and managed by the State Government and is also fully funded by the State government, CIMS is an institution established, owned and managed by the University. As we have seen, CIMS is not a government institution and at best it is an institution aided by the State Government but not owned and fully funded by the State Government. Hence, CIMS cannot be equated with the J.N.M. Medical College, Raipur, in the matter of fixation of fees for students admitted to the MBBS course in CIMS. The contention of Mr. Tiwari that the University and CIMS cannot charge more fees from the students admitted to the MBBS course in CIMS than the

fees charged from students admitted to the MBBS course in the J.N.M. Medical College, Raipur, therefore, has no merit.

12. Mr. Kanak Tiwari, learned counsel for the petitioner, next submitted that Article 12 of the Constitution defines "State" for the purpose of Part III of the Constitution to include not only the Government and the Parliament of India and the Government and the Legislature of each of the States but also local or other authorities within the territory of India or under the control of the government of India. He submitted that the Supreme Court has held in ***Electricity Board, Rajasthan v. Mohanlal*** (AIR 1967 SC 1857) that the State Electricity Board of Rajasthan constituted under the Electricity Supply Act, 1949 comes within the meaning of "other authorities" in Article 12 of the Constitution and is, therefore, "State" within the meaning of Article 12 of the Constitution. He submitted that the University constituted under the Chhattisgarh Vishwavidyalaya Adhiniyam, 1973 similarly comes within "other authorities" in Article 12 of the Constitution and will be a "State" within the meaning of Article 12 of the Constitution. He argued that the University would be thus "State" for the propose of Part III of the Constitution and accordingly the University has all the obligations of the State In by Part III and Part IV of the Constitution. Developing this argument, Mr. Tiwari submitted that in ***Mohini Jain v. State of Karnataka and others*** (AIR 1992 SC 1858) the Supreme Court has held that the right to education is a fundamental right enshrined in Part III of the Constitution and the State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens and that opportunity to acquire such education cannot be confined to richer sections of the society. He referred

to the observations of the Supreme Court that capitation fee brings to the fore a clear class bias and enables the rich to take admissions whereas the poor has to withdraw due to financial inability and a poor student with better merit cannot get admission because he has no money whereas the rich can purchase the admission and such a treatment is patently unreasonable, unfair and unjust. Relying on these observations of the Supreme Court in Mohini Jain's case, he submitted that the State is under an obligation to provide medical education to all, particularly the poorer sections of the society in the State of Chhattisgarh and cannot charge fees which are beyond the reach of the poorer sections of the society.

13. In reply, Mr. Manindra Shrivastava learned counsel for the Univerrsity and the CIMS submitted that in ***Unnikirshnan J.P. and others v. State of Andhra Pradesh and others*** (1993) 1 SCC 645, the Constitution Bench of the Supreme Court after considering the decision in ***Mohini Jain's*** case has clearly held that there is no fundamental right to education beyond the age of 14 years and there is no fundamental right for higher education. He submitted that although the State Government is providing funds for meeting the non-recurring expenditure on infrastructure facilities such as building, books, equipments, etc, it has made it clear from time to time that the recurring expenditure on salary of the teaching and non-teaching staff in the establishment of CIMS has to be met by CIMS out of its own resources. He submitted that the Medical Council of India lays down norms regarding the teaching staff to be employee in CIMS as a condition of recognition of the MBBS degree and to meet these norms, CIMS has to incur a lot of expenses and unless it raises such funds by charging higher fees from students admitted to the payment

seats, it will not be possible for CIMS to maintain the standards and norms prescribed by the Medical Council of India. He cited the decision of the Supreme Court in ***Institute of Human Resources Development and others v. T.R. Ramesh Kumar and others*** (1995) 4 SCC 211 in which the decision of the government of Kerala to start two engineering colleges with a scheme of self financing by charging higher fees from students admitted to the two engineering colleges has been upheld by the Supreme Court. He submitted that there is, therefore, no illegality committed by the University and the CIMS by charging higher frees from the students admitted into the MBBS course in CIMS.

14. We have perused the decisions cited by the learned counsel for the parties and we find that in ***Mohini Jain's case*** (supra), the notification of the Karnataka government permitting the private medical colleges to charge extra tuition fees for the students other than those admitted to government seats was challenged and a Division Bench of the Supreme Court held that every citizen has a right to education under the constitution and the State Government is under an obligation to establish education institutions to enable the citizens to enjoy the said right and the State may discharge its obligation through State-owned or State-recognized educational institutions. The Supreme Court further observed that students are given admission to educational institutions, whether State-owned or State-recognized, in recognition of their right to education under the Constitution and charging of capitation fee in consideration of admission to educational institutions is a patent denial of the citizens' right to education under the Constitution. This view taken by the Division Bench of the Supreme Court in ***Mohini Jain's case*** was referred to the

Constitution Bench in ***Unni Krishnan'scase*** (supra). Sharma, C.J. and Bharucha, J. did not approve of the view taken by the Division Bench in ***Mohini Jain's case*** that a citizen has a fundamental right to education for professional degree. Mohan,J. observed that the view taken by the Division Bench in ***Mohini Jain's*** case that the State is under a Constitutional mandate to provide educational institutions at all levels for the benefit of the citizens is somewhat broadly stated. Mohan, J. observed that higher education calls heavily on national economic resources and therefore, the right to it must necessarily be limited in any given country by its economic and social circumstances. Mohan, J further held that the State's obligation to provide higher education is not absolute and immediate, but relative and progressive and it has to take steps to the maximum of its available resources with a view to achieve progressively the full realization of the right of education by all appropriate means. Jeevan Reddy, J., delivering the judgment for himself and Pandyan,J., held in para 171 of the judgment as reported in the SCC, that the right to education, understood in the context of Article 45 and 41 means : (a) every child or citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. In paragraph 181 of the judgment, as reported in the SCC , Jeevan Reddy, J held:

> "*Right to education after the child / citizen completes the age of 14 years.* The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part-IV to Part-III – we are merely relying upon Article 41 to

illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State. "

It is thus clear from the aforesaid view taken by all the Judges in ***Unni Krishnan's*** case that there is no fundamental right to education beyond the age of 14 years.

15. After ***Unni Krishnan's*** case, a new provision in Article 21-A has been introduced in Part-III of the Constitution which provides that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. By inclusion of an express fundamental right to education in Article 21-A of the Constitution only up to the age of 14 years, it can no longer be held that a child or a citizen has fundamental right to higher education beyond the age of 14 years under the Constitution. In the absence of any such fundamental right to higher education including medical education under the Constitution, no direction can be given to the State to provide funds to CIMS for meeting also the recurring expenditure on salary and allowance of teaching and non-teaching staff and other expenses so that only nominal fees can be charged from the students taking admission in the MBBS course in CIMS.

16. Mr. Tiwari, learned counsel for the petitioner, next submitted that in any case the scheme framed in ***Unni Krishnan's*** case (supra) for charging lower fees for 50% of the seats from students with better merit and higher fees for the remaining 50% of the seats from students with less

merit was meant to take care of costs of education in unaided private professional colleges and was applicable to only private professional colleges and not to colleges run by the Government or the University, as will be clear from paragraph 210 of the judgment as reported in the SCC. He submitted that the aforesaid scheme framed in ***Unni Krishnan's*** case was re-examined and was not approved by a larger Bench of 11 Judges in ***T.M.A. Pai Foundation and others Vs. State of Karnataka and others, (2002) 8 SCC 481***. He referred to paragraph 37 of the said judgment as reported in the SCC in which Kripal, CJ has held that the aforesaid scheme of free and payment seats in ***Unni Krishnan's*** case has created certain problems and it is unreasonable to compel a citizen to pay for the education of another. He submitted that in the said para 37 of the judgment Kripal, CJ has observed that urban students always have an edge over the rural students and marginally less merited rural or poor students secure less marks than the urban students and therefore by paying higher fees for payment seats have to bear the burden of a rich and well-exposed urban students. Mr. Tiwari vehemently argued that Article 14 of the Constitution implies that students should be admitted to educational institutions including medical colleges solely on the basis of their merit and by charging exorbitant fees for payment seats to students who cannot afford the same, merit of the student who cannot pay is pushed aside and instead their paying capacity of students with lesser merit becomes the basis for admission. He submitted that the provision in the rules for admission as well as statute no.35 for charging fee of Rs.2,50,000/- per student per annum for the MBBS course from students admitted to payment seats is, therefore, violative of Article 14 of the Constitution.

17. Mr. Shrivastava, learned counsel for the University and the CIMS, on the other hand, submitted that in ***Institute of Human Resources Development and others Vs. T.R. Ramesh Kumar and other*** (Supra), the Supreme Court has rejected a similar contention that if the two colleges under a self finance scheme of the State Government of Kerala do not admit students entirely on merit and a very meritorious student is unable to secure admission if he is not in a position to pay the higher fees, and has instead held that undoubtedly financial capacity to bear the higher fees will be a consideration which may compel an individual student to either accept or decline the offer of a seat, but this would be so even in a case where the fees are lower and there may be meritorious students who are so poor that they cannot afford even the low fees which are charged, but that is no ground for saying that admission is not available on merit. He submitted that under Section 6 (28) of the Chhattisgarh Universities Act, 1973 the University has been conferred with statutory power to demand and receive payment of such fees and other charges as may be prescribed by the Ordinances. He submitted that Section 35 of the said Act provides that subject to the provisions of the Act and the rules framed thereunder the Statute may provide for the matters mentioned therein and Section 37 of the said Act provides that subject to the provisions of the Act and the statutes, the Ordinances may provide for the matters mentioned therein. He pointed out that one of the matters for which Ordinance may be made is levy of fees. He submitted that as a matter of fact, the University in exercise of such statutory powers has fixed fees of Rs.34,500/- for the free seats and Rs.2,50,000/- for the payment seats for the MBBS course in CIMS and subsequently the fees of

Rs.2,50,000/- have been reduced to Rs.1,90,000/- pursuant to the Report of Justice Jha, appointed by the Chief Justice in accordance with the judgment of the Supreme Court in the case of ***Islamic Academy of Education and another Vs. State of Karnataka and others***, (2003) 6 SCC 697. He vehemently argued that such fixation of fees by the University in exercise of its statutory powers under the Chhattisgarh Universities Act, 1973 is legislative in character and the power of the Court to interfere in such fixation of fees in exercise of statutory power is very limited. In support of this submission he cited the judgment of the Supreme Court in ***State of U.P. and others Vs. Renusagar Power Co. and others, (1988) 4 SCC 59.***

18. We have considered the aforesaid authorities cited by Mr. Tiwari and Shri Shrivastava and we find that the scheme framed in ***Unni Krishnan's*** case (supra) was not to be applicable to colleges run by Government or the University. In para 210 of the judgment in the said case of ***Unni Krishnan*** as reported in (1993) 1 SCC 645 at page 756, it is expressly stated that "this scheme is not applicable to colleges run by Government or to University colleges" . Hence, the scheme of charging lower fees for the first 50% of the seats from students with better merit and charging higher fees for the remaining 50% of the seats from students with lesser merit was not applicable to CIMS which is a University College.

19. In ***Institute of Human Resources Development and others v. T.R. Ramesh Kumar and others*** (supra), two colleges were set up in the State of Kerala as self financing institutions by two societies under the control of the Government of Kerala in view of the growing demand in the State for highly qualified technical persons in electronic and

computer science. Under the scheme, tution fee for all students were fixed at Rs.12,500 per annum per year but in case of Scheduled Castes and Scheduled Tribes tuition fee was fixed at half the aforesaid amount i.e. Rs.6,250/- per annum per student. A contention was raised on the basis of the law laid down in ***Unni Krishnan's*** case (supra) by the respondent in that case before the Supreme Court that 50% of the seats in the two engineering colleges should be free seats and students admitted to such free seats should not be made to pay the tuition of Rs.12,500/- per year. The Supreme Court turned down this contention by holding that the entire scheme in ***Unni Krishnan's*** case is designed for private education and was not applicable to colleges run by the societies under the control of the government. Para 10 of the judgment of the Supreme Court in the aforesaid case of ***Institute of Human Resources Development and others Vs Ramesh Kumar and others*** (supra), which is relevant for the purpose of deciding this case is quoted herein below:

> "The entire scheme in *Unni Krishnan* is designed for private educational institutions. The contention of the respondent that two colleges in question should also be considered as private Engineering Colleges because they are run by two societies registered under the Travancore – Cochin Literary, Scientific and Charitable Societies Registration Act 1955, cannot be accepted in view of the Government Order dated 08.06.1994. The material which is produced before us clearly shows that these two societies are fully controlled by the State of Kerala. The fees which have been fixed in the present case are also fixed by the State Government which has given budget details relating to these two colleges. The appellants have sought exemption from providing 50% free seats in the light of the fact that the State already runs or aids nine Engineering Colleges which are financed by it and which provide 2391 free seats. What is more important, it is pointed out that if the financing of the colleges is spread over all the

> available seats, the fees required to be charged would be much lower than if the expenses have to be covered by the fees from only 50% of the seats. In consequence, the fees charged are substantially lower than fees charged for payment seats in other Engineering Colleges – thus, benefiting a large number of students who may not be in a position to pay the higher fees charged by private Engineering Colleges, but may be in a position to pay the substantially lower fees charged in these two colleges. "
>
> (Emphasis supplied)

The underlined portion of the aforesaid judgment of the Supreme Court would show that in the scheme framed for the two colleges in Kerala, the financing of the college was spread over all the available seats and the fees required to be charged was much lower than the expenses that were to be covered by the fees from only 50% of the seats. But this is not the scheme in the present case under which fees of Rs.34,500/- only are to be charged for free seats and fees of Rs.2,50,000/- now reduced to Rs.1,90,000/- are to be charged from students admitted to the payment seats on the basis of the law laid down in ***Unni Krishnan's*** case and as a result the second 50% of the students admitted into the payment seats are made to bear the cost of first 50% of the students admitted into MBBS course of CIMS against the free seats.

20. In ***T.M.A Pai Foundation and others Vs. State of Karnataka and others*** (supra), a larger Bench of eleven Judges of the Supreme Court considered the reasonableness of the scheme of "free" and "payment" seats evolved in ***Unni Krishnan's*** case and Kripal, CJ; speaking for the majority, observed:

> "*Unni Krishnan* Judgment has created certain problems, and raised thorny issues. In its anxiety to check the commercialization of

education, a scheme of "free" and "payment" seats was evolved on the assumption that the economic capacity of the first 50% of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "payment seat" students would not only pay for his own seat, but also finance the cost of a "free seat" classmate. *When one considers the Constitution Bench's earlier statement that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examination which assess the merit for the purpose of admission solely on the basis of the marks obtained, where the urban students always have an edge over the rural students. In practice, it has been the case of the marginally less merited rural or poor students bearing the burden of a rich and a well-exposed urban student. "*

It will thus be clear from the observations of Kripal, CJ speaking for the majority of the Judges in the case of ***T.M.A. Pai Foundation*** (supra) that that the scheme evolved in ***Unni Krishnan's*** case of charging lower fees from the 50% students admitted to the free seats and much higher fees from the remaining 50% of the students admitted to the payment seats was unreasonable and that a student cannot be compelled to pay for the education of another, more so when in the competitive examination in which the merits of the candidates for admission were assessed, urban students always have an edge over the rural students and the result is that a marginal less merited rural or poor student is made to be bear the cost of education of a rich and well exposed urban student. A reading of the decision of the Supreme Court in ***TMA Pai Foundation and others v. State of Karnataka and others*** (supra), would show that the said decision was rendered in the case of private institutions and not in the case of University colleges, but the aforesaid observations of Kripal C.J. speaking for the majority would equally apply to a University College in

which the scheme of charging lower fees from the students with higher merit admitted to the free seats and charging higher fees from students with marginally lesser merit admitted to the payment seats has been adopted because such a scheme whenever adopted forces the marginally less merited poor and less exposed students to bear the cost of the higher education of the rich and well exposed urban students. We thus hold that the decision of the University and CIMS to charge Rs.2,50,000/- per annum per student from students admitted to the MBBS course in CIMS against payments with a view to meet the cost of medical education not only of students admitted to payment seats but also of students admitted to the free seats is unreasonable and arbitrary and violative of Article 14 of the Constitution.

21. In ***Islamic Academy of Education v. State of Karnataka*** (2003) 6 SCC 697, the Supreme Court clarified certain doubts and anomalies which had arisen after the said judgment in the case of ***TMA Pai Foundation*** was delivered on 31.10.2002. One of the questions which arose for consideration in the said case of ***Islamic Academy of Education*** was whether educational institutions are entitled to fix their own fees structure and in para 7 of the judgment as reported in the SCC, the majority of the Judges speaking through Khare, C.J. referred to the observations in the judgment in the case of TMA Pai Foundation in which it has been that "**the decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government**" and thereafter directed that in order to give effect to the judgment in ***TMA Pai*** case the respective State Governments/concerned authority shall set up

in each State, a committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State and each educational institution may place before this committee well in advance of the academic year, its proposed free structure and the committee shall then decide whether the fees proposed by that institute are justified. Thus, these directions of the Supreme Court in ***Islamic Academy of Education*** apply to only private educational institutions and not to the educational institutions of the University. Hence, the committee headed by Justice Jha (Retired) appointed by the State Government pursuant to the aforesaid directions of the Supreme Court in the case Islamic Academy of Education was to decide on the fees structure for private educational institutions in the State of Chhattisgarh which do not receive any funds from the State Government and not the fees structure of University institutions such as the CIMS. The report of the Jha committee fixing a fee of Rs.1,90,000/- from students admitted to the seats of MBBS course has no application to CIMS which is an institution of the University aided by grants from the State Government and not a private educational institution which do not receive grants from the State Government.

22. In ***State of U.P. and others v. Renusagar Power Co. and others*** (supra) cited by Mr. Shrivastava, learned counsel for the University and the CIMS, the Supreme Court laid down the following proposition on the basis of the law laid down in C.I.T. v. Mahindra & Mahindra Ltd. (AIR 1984 SC 1182) :

> "The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration

> or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of the facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. "

The Supreme Court, therefore, made it clear in the aforesaid decision that the exercise of power, legislative or administrative, will be set aside if it is manifestly arbitrary. Thus, even though the University and its authorities have statutory power under the Chhattisgarh Universities Act, 1973 to fix the fee for students admitted to its colleges, if the exercise of such statutory power by the University or its authorities is manifestly arbitrary, the Court can set aside the exercise of such power. In the present case, since we have found that the University and its authorities, while fixing the fees of students admitted to payment seats have arbitrarily and unreasonably fixed the fees at Rs.2,50,000/-, we set aside and quash the decision of the University and its authorities as contained in the rules for admission as well as Statute No.35 fixing the fees of such students at Rs.2,50,000/- (now reduced to Rs.1,90,000) per annum.

23. Our order quashing the decision of the University and the CIMS and the rules and Statute fixing the fee for payment seats at Rs.2,50,000/- (now reduced to Rs.1,90,000/-), however, will apply to academic year 2005-2006. For academic session 2004-2005, students in the merit list have not been able to take admission on account of their inability to pay the fees of Rs.2,50,000/- for the payment seats and they cannot take admission at this stage for the said academic session under the Medical Council of India Regulations on Graduate Medical Education, 1997. In ***Medical Council of India v. Madhu Singh and others*** {(2002)

7 SCC 258}, the Supreme Court, after referring to its earlier decisions, held that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. In view of the view taken by the Supreme Court in a number of decisions on the need to adhere strictly to the time schedule for admission, the Court should not quash the admissions of students made against the payment seats for the academic session 2004-2005 to make room for students with better and more marks in the pre-medical tests for the concerned academic session. But we make it clear that those amongst the students who were entitled to admission to the 82 seats (41 free seats + 41 payment seats) of MBBS on the basis of their merit in the merit list but have been admitted to the payment seats in the academic session 2004-2005 will be liable to pay only Rs.34,500/- per annum and the remaining students will continue to pay the fees of Rs.2,50,000/- because they were not entitled to admission to the 82 seats as per their merit and had agreed to pay Rs.2,50,000/- at the time of admission.

21. But so far as the academic session 2005-2006 is concerned, on 8.8.2005 a Division Bench of the Court had passed an order directing that till the matter was taken up by the Full Bench, no admission will take place to the so called "payment seats". Thereafter, the matter was heard by the Full Bench on 6.8.2005, 18.8.2005 and 23.8.2005 and it was found that before the interim order was passed on 8.8.2005 by the Division Bench, 10 candidates had already been admitted bypassing the merit of the candidates who were not in a position to pay the high fees of Rs.1,90,000/-. To ensure that all admissions take place within the time schedule fixed by the Supreme Court, we passed an order on 23.08.2005 that all the seats will be filled up by candidates strictly on the basis of their

merits subject to reservation, on their paying the normal fees that are payable for admission to free seats and that the 10 candidates already admitted bypassing the merit against payment seats will not be disturbed and will be permitted to continue their studies subject to the result of the petition. Since we have now taken a view that the University and CIMS cannot charge the higher fee of Rs. 2,50,000/- (now reduced to Rs.1,90,000/-) for admission to the so called "payment seats", we hold that all the candidates who have been admitted to the 41 payment seats by paying normal fees payable for admission to free seats will not be liable to pay fees of Rs.2,50,000/- (now reduced to Rs.1,90,000).

25. Regarding the 10 candidates who have been admitted to the payment seats bypassing the merit of the candidates prior to the interim order dated 18.8.2005 passed by the Division Bench of this Court, the 10 students who have been admitted were not a party to the decision taken by the University authorities and CIMS to charge the higher fees of Rs.2,50,000/- (now reduced to Rs.1,90,000/-) for payment seats. It has been submitted on behalf of these 10 students some of whom are interveners in the present writ petition that they cannot take admission anywhere else now as the admissions in other colleges are over and they will suffer immense hardship if their admissions against payment seats are set aside at this stage. The judgment in the case of ***T.M.A. Pai Foundation*** (supra) was delivered by the Supreme Court as far back as in October 2002 disapproving the scheme in ***Unni Krishna's*** case for charging higher fee for payment seats. The said judgment also has been referred to in paragraphs 5 and 6 of the writ petition in the present case. Despite the said judgment, the University and CIMS have continued the

scheme for charging higher fees from students admitted against payment seats for the academic session 2005-2006. For the wrong committed by the University and CIMS, not the students admitted to the MBBS course but the University and the CIMS have to bear the extra burden of ten additional seats for accommodating these 10 admissions made prior to the interim order dated 18.8.2005 passed by the Division Bebnch. In ***Punjab Engineering College v. Sanjay Gulati*** (AIR 1983 SC 580), the Supreme Court observed :-

> " It is strange that in all such cases, the authorities who make admissions by ignoring the rules of admissions contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made. "

The aforesaid decision of the Supreme Court will equally apply to the present case. In the aforesaid decision, the Supreme Court has held that those who infringe the rules for admission must pay for their lapse and wrong done to the deserving students who ought to have been admitted has to be rectified and the best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made. We accordingly direct that the University and CIMS will, with the sanction of the Medical Council of India, increase the strength

of seats for the academic session 2005-2006 by 10 in proportion to the ten wrong admissions made against payment seats bypassing the merits of the candidates who could not afford to pay the high fees for payment seats. But we make it clear that those 10 students who have been admitted by passing merit of the candidates in the merit list will continue to pay Rs.1,90,000/- as fees as they were not entitled to admission on the basis of their merit and they have agreed to pay the fees of Rs.1,90,000/- to CIMS at the time of admission.

26. Before we part, we make it clear that it is open to the University and the CIMS to drawn up a fresh scheme in consultation with the State Government for fixing the fees of students admitted to the MBBS course in CIMS keeping in mind the equality clause in Article 14 of the Constitution, the provisions of the Chhattisgarh Universities Act, 1973 and all other relevant factors. The CIMS may also consider granting special facilities in the form of merit scholarship or freeships to those who are financially handicapped or to those who belong to Scheduled Castes and Scheduled Tribe communities as has been provided in the scheme for the two engineering colleges set up by two societies controlled by the government of Kerala in the case of ***Institute of Human Recourses Development and others v. T.R. Ramesh Kumar and others*** (supra). In paragraph 5 of the said judgment, as reported in the SCC, it is stated that whereas tuition fee for all students has been fixed at Rs.12,500/- per year, the tuition fee for Scheduled Castes and Scheduled Tribes students is fixed at Rs.6,250/-. In para 15 of the said judgment, as reported in the SCC, it is stated that those who are financially handicapped, special facility in the shape of merit scholarship or freeships should be made

available. These are relevant aspects which may be considered by the University and the CIMS while framing a fresh scheme of fees to be charged from the students.

27. With the aforesaid observations and directions we dispose of only the PIL i.e. W.P.No.3642 of 2004. All the other writ petitions will now be listed before the learned Single Judge on 26.09.2005 who will consider the facts of each case in the light of the principles and observations laid down in this judgment after hearing the learned counsel for the parties and pass final orders after taking into consideration the interim orders, if any, passed in the case.

Sd/- Chief Justice	Sd/- Fakhruddin Judge	Sd/- L.C. Bhadoo Judge

Nair*

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... WP 3847/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	26.9.2005 When the matter is called out, none present on behalf of the petitioner. Shri Sandeep Dubey, Govt. Adv. for respondent Nos.1 & 2. Shri Manindra Shrivastava, Sr. Counsel with Shri Amrito Das, Counsel for respondent Nos.3 & 4. The case of the petitioner is that she appeared in the Pre-Medical Test of 2005, she has been placed at Sr. No.184 and therefore, she received a communication dated 28.7.2005 sent by respondent No.2 for admission in management quota seat by the CIMS i.e. against the payment seat. Whereas, the case of the petitioner is that she is entitled for admission against free seats. The petitioner has already been admitted against the payment seat and the point raised by the petitioner in this petition has already been decided by the Full Bench of this Court in **W.P. No.3642/04** between **Sudeep Shrivastava Vs. State of Chhattisgarh and others** on **23.9.2005**. Therefore, respondent Nos.2 to 4 are directed to consider the case of the petitioner in the light of above order of the Full Bench. With the direction aforesaid, the petition stands disposed of. Certified copy as per rules. **Sd/-** **L.C. Bhadoo** **Judge**	